

### **REMARKS**

Claim 11 was objected to because of the use of the acronym "PVC". The claim has been amended to specify polyvinylchloride to address the objection. The objection is believed moot.

Claims 1, 2, 8, 16-19, 21 and 23-25 stand rejected under § 102 in view of Jacobsen. The rejection is moot with respect to claims 16-19, 21 and 23-25 as those claims have been canceled. The rejection is respectfully traversed with respect to claims 1, 2 and 8.

Regarding claim 1, applicant believes that the examiner recognizes that the device of Jacobsen is not concerned with a building foundation, but is instead concerned with a roof flashing to be used with a skylight or other structure that penetrates the roof of a house. The conditions at the roof barrier of a house are substantially different than that from a foundation, and the device in Jacobsen is not suitable for protecting a building foundation like the preformed unibody diverter that is defined in claim 1.

The rejection alleges that Jacobsen discloses a preformed unibody diverter. This is not correct. The preformed unibody diverter of claim 1 is defined as such because multiple separate pieces that are joined (not unibody) would not be suitable for the corner or angled sections of a building foundation. The device of claim 1 is a unibody device with the portions having specific relationships to one another. The claim does not read upon a welded structure welded to join three separate elements such as that disclosed in Jacobsen. As indicated in column 3, lines 20-23, the elements relied upon by the examiner are welded together. There is no unibody structure shown in Jacobsen that includes the claimed first and second portions and angled section.

Claims 1, 2, 8, 11-19, 21-27, 33-35, 37-39, 44-46, 52-54, 65 and 67-68 stand rejected under § 102(b) in view of Syx. The rejection is respectfully traversed with respect to the claims that remain pending.

Syx discloses a vegetation barrier that is used and designed primarily for fences, but also is shown in Fig. 15 as being a barrier for the “periphery of a house 102 or a tree 104”. Col. 5, lines 39-40. Syx’ device provides “a plastic track designed to be positioned along a bottom portion of a fence so as to prevent vegetation growth and facilitate grass cutting with a lawnmower or weed cutter.” Col. 2, lines 3-5. The sizes and relative dimensions of the pieces in Syx’ vegetation barrier are apparently selected to facilitate a lawnmower wheel and provide an above the ground vegetation barrier. While there is some similarity in general shape, Syx fails to disclose the important features of the invention as defined in the claims.

Regarding claim 1, claim 1 requires that the angled section that extends downwardly has a larger width than the vertical section. There was an mistake in claim 1 which would have been apparent from review of claims 3 and 4 because claim 1 should specify that the angled section has a larger width than the vertical section consistent with claims 3 and 4, and the specification such as on page 7. This has been corrected by amendment. Additionally, the claim has been amended to note that the difference in the width is substantial, consistent with the examples in the specification, drawings and preferred embodiments, such as those expressed in the dependent claims. Syx’ fence vegetation barrier does not meet this requirement. None of the embodiments shown in Syx meet this, in fact, all seem to have a longer vertical section such as shown in Figs. 13 and 14. This is also true of the example embodiment in Fig. 15 of Syx that is shown to be around the base of a house. It is also noted that Syx does not contemplate using anything around a foundation of a house, which is typically below ground level. The vegetation barrier is intended to assist lawn mowing, for example, and is not intended for such use. Syx’ general dimensions and relative dimensions appear unsuited for use as is contemplated in the present invention to direct water away from the building foundation.

Regarding claim 26, claim 26 defines a system that includes three separate unibody diverters that are respectfully shaped to fit closely to the outside corner, generally planar surface, and inside corner of a building foundation. No such system diverters of any sort is disclosed in Syx. As seen in Fig. 15, Syx does not disclose anything that fits around a building foundation and certainly does not disclose any inside corners.

Regarding claim 54, this claim has been amended to make the corrections regarding the relative length of the vertical and angled section as in claim 1, and also has been amended to indicate similarly to claim 1 that the angled section is substantially larger in width than the vertical section. For the reasons expressed with respect to claim 1, the rejection of claim 54 is also traversed.

Regarding claim 65, this claim has been amended to indicate that the diverter body that is a unibody construction surrounds and fits closely around a cylindrical post of a building foundation. This is shown, for example, in Fig. 9A, where there is an overlapping portion such that the diverter that is of a unibody construction surrounds the building post. In Fig. 1, Syx discloses a multipiece construction that fits around a fence post, but discloses nothing that is of a unibody construction and is configured to surround the cylindrical post of the building foundation.

Claims 65 and 66 stand rejected under § 102(b) as being anticipated by Mayle. The rejection is respectfully traversed.

Mayle discloses a roof membrane. It is formed in sections and is not of a unibody construction. It also is not configured to surround a cylindrical post of a building foundation. Accordingly, the rejection is traversed.

Claims 3-7 and 9-11 stand rejected under § 103 being unpatentable over Jacobsen. The rejection is respectfully traversed.

The conclusion with respect to particular dimensions in the claims is that it would have been within the skill of an ordinary artisan in the art in view of Jacobsen. However, Jacobsen concerns roof flashings. The particular dimensions and angles of claims 3, 4 and 7 are likely unsuitable for the roofing applications contemplated with Jacobsen. An

artisan looking to modify the roofing structure of Jacobsen would not contemplate these dimensions. Nor would an artisan even be motivated to apply the roofing flashing of Jacobsen to water diversions from a building foundation as there is no motivation or indication that Jacobsen's structures are suitable for building foundation protection.

Claims 3, 4 and 7 have been amended such that they are consecutively dependent upon one another. This gets after preferred embodiments in the specification that are especially effective for diverting water away from a building foundation as has been discovered by the inventors.

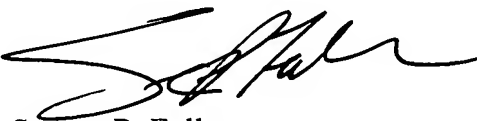
Claims 3-7, 9, 20 and 28-32, 36, 40-43, and 47-51 stand rejected under § 103 in view of Syx. The rejection is respectfully traversed.

Here again with respect to the dependent claims contemplated in the rejection, it is concluded that Syx would disclose any number of ratios of sizes of vertical sections and lower sections. However, Syx is concerned with providing a vegetation barrier and an aid to mowing and weed whacking. Also, Syx' devices are used above ground, and would be limited in the ratios of sizes that could be used or the device would become obtrusive and would fail to perform the purposes intended in Syx. For example, if the lower section was 30" long and the angles in Syx were maintained, Syx' device would extend well away from the fence or the building and that is not an intended result in Syx. Making it such a size would interfere with grass cutting, for example, and would also extend the vegetation barrier a significant distance away from the fence or a building and would be unattractive. Syx discloses nothing for use with respect to a building foundation and nothing that is intended to be used underground. Accordingly, it is inappropriate to conclude that an artisan would modify the Syx vegetation barriers to the particularly claimed dimensions such as claimed in claim 7 as it depends from claims 3 and 4 or claim 31 that depends from claim 29 and 28 (as amended).

In view of the amendments and remarks, applicant believes that the case is now in condition for allowance and respectfully requests notice of the same. Should the examiner believe that there are outstanding issues or that an interview would expedite prosecution, the examiner is invited to contact the undersigned attorney at the below-listed number.

Respectfully submitted,

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